

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

J. TYRONE RIORDAN,

Petitioner,

vs.

No. CV 17-00421 RB/KK

KEN SMITH, WARDEN

Respondent.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER is before the Court under Fed. R. Civ. P. 41(b) on the handwritten petition under 28 U.S.C. § 2241 for writ of habeas corpus filed by Petitioner J. Tyrone Riordan (Doc. 1). The Court will dismiss the petition without prejudice for failure to comply with Court orders and failure to prosecute.

Petitioner filed his habeas corpus petition on April 6, 2017. (Doc. 1.) Petitioner did not pay the \$5 filing fee or submit an application to proceed without prepayment of fees or costs pursuant to 28 U.S.C. § 1915. Because Petitioner failed to either pay the \$5 filing fee or submit an application to proceed under § 1915, on March 23, 2018, the Court ordered Petitioner to cure this deficiency within 30 days by either paying the \$5 or submitting an application to proceed *in forma pauperis*. (Doc. 6.) The Order advised Petitioner that, if he failed to cure the deficiency within the 30-day time period, the Court could dismiss this proceeding without further notice. (*Id.* at 1.) The Court also sent Petitioner the forms for submitting an application under § 1915. (*Id.* at 2.)

More than 30 days elapsed, and Petitioner did not pay the filing fee, submit an application to proceed *in forma pauperis*, or otherwise respond to the Court's March 23, 2018 Order. The Court entered an Order to Show Cause on April 27, 2018, directing Petitioner Riordan to show cause why the case should not be dismissed for failure to comply with the Court's March 23, 2018 Order. (Doc. 7.) Petitioner Riordan has never responded to the Court's April 27, 2018 Order to Show Cause and has not filed any document with the Court since June 20, 2017.

Pro se litigants are required to follow the federal rules of procedure and simple, nonburdensome local rules. *See Bradenburg v. Beaman*, 632 F.2d 120, 122 (10th Cir. 1980). The local rules require litigants, including prisoners, to keep the Court apprised of their proper mailing address and to maintain contact with the Court. D.N.M. LR-Civ. 83.6. Petitioner Riordan has failed to comply with D.N.M. LR-Civ. 83.6.

A prisoner litigant must also pay the filing fee or comply with the requirements of 28 U.S.C. § 1915. Under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required collect the \$5 fee from the Petitioner or authorize Petitioner to proceed without prepayment of the fee. Petitioner Riordan has failed to comply with 28 U.S.C. § 1915 and with the Court's March 23, 2018 and April 27, 2018 Orders.

Petitioner Riordan has failed to comply with Court orders and failed to prosecute this action by not paying the filing fee or submitting an application to proceed under 28 U.S.C. § 1915. The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003). Therefore, the Court will dismiss this civil

proceeding pursuant to Rule 41(b) for failure to comply with the Court's Orders and failure to prosecute this proceeding.

IT IS THEREFORE ORDERED that the handwritten petition under 28 U.S.C. § 2241 for writ of habeas corpus filed by Petitioner J. Tyrone Riordan (Doc. 1) is **DISMISSED** without prejudice under Fed. R. Civ. P. 41(b) for failure to comply with Court orders and failure to prosecute.



ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE